IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 447 of 2000

1. Dattu Khandu Pandhare

2. Sukhdeo Hanmant Pandhare ...Appellants

V/s

The State of Maharashtra ..Respondent

Shri Niranjan Mundergi, Advocate appointed for the

Appellant no.1

Shri Indrajeet Joshi, Advocate for the Appellant no.2

Smt. V.R.Bhosale, A.P.P. for the State

CORAM: S.B.MHASE AND

S.R.SATHE,JJ.

DATE: JUNE 7, 2005

. For the reasons recorded separately in Oral Judgment the court passes the following order:-

. In the result we find that there is no merit in the appeal.

. The appeal is hereby dismissed.

(S.R.SATHE,J.) (S.B.MHASE,J.)

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ORAL JUDGMENT :- (Per S.B.Mhase, J.)

1. This appeal is directed against the judgment of IInd Additional Sessions Judge, Sangli in Sessions Case No.199 of 1998, whereby both the Appellants were convicted under Section 302 read with 34 of IPC and sentenced to suffer imprisonment for life and each of them to pay fine of Rs.1000/-, in default to suffer R.I. for one month.

2. The incident has taken place on 27-5-1998 at about 7-00 p.m. opposite pan shop of one Baban @ Babasaheb Ibrahim Mulla situated at village Shinganapur, Taluka Jath, District Sangli. FIR in respect of crime was lodged by PW 7 Ramchandra Babasaheb Patil, who is a son of deceased Babasaheb Patil. After giving history in respect of their relations etc. he has reported that on 27-5-1998 he was returning from his farm and was waiting for the tractor repair at a shop of Laxman Desai, at about 7-00 hours in the evening. At that time, Dada Tayappa Pandhare PW 5 and Nandu Annappa Pandhare PW 4 came running to PW 7 Ramchandra Babasaheb Patil and reported that Datta Khandu Pandhare, accused no.1 and Sukhadeo Hanmant Pandhare, accused no.2 and father of Dattu viz. Khandu Nivrutti Pandhare had beaten the deceased Babasaheb by means of sword and axe near panpatti shop of Baban Mulla. On getting this information, PW 7 went towards the said place of offence and found that deceased was lying in the pool of blood and he was having injuries on the head, neck, back and hands. Thereafter with the help of Ganpati Sonu Pandhare, Dnyanu Vithoba Pandhare, Shankar Yesu Pandhare etc. the deceased was taken in a truck to Daphalapur and then he was brought to the Government Hospital, Jath where the deceased was declared as dead. After the said declaration, the FIR was lodged immediately on the same day and it was registered at 23-30 hours under Section 302 read with 34 of IPC. Since the deceased Babasaheb was declared

dead the inquest panchanama **Exhibit 9** was prepared at Hospital. The clothes on the person of the deceased were seized by panchanama Exhibit 10.

3. It is pertinent to note that in order to prove the guilt of the Appellants-accused, the prosecution has examined 13 witnesses. Out of the said 13 witnesses, PW 3 to PW 10 are the eye witnesses. However, PW 3, 4, 5, 6 and 10 have not supported the prosecution case. It is PW 8 Ganpati Shinu Pandhare and PW no.9 Sanjay Hariba Patil have supported the prosecution story as eye witnesses. Apart from this, there is evidence of panch witnesses regarding discovery of clothes of accused and weapons used by them. At the instance of statement made by accused no.2 an axe Article "A" and sword Article "B" were recovered by the Investigating Officer. The clothes of accused were also recovered by panchanama **Exhibit 18** and they are marked as **Exhibits C, D, E and F**. Post-mortem report is at **Exhibit 15** and PW 12 Dr.Kailash Umaji Sanamadikar was examined to prove the said Post-mortem report. PW 13 Anil Nivruti Kadam is Investigating Officer.

4. On the basis of this evidence the trial Judge has came to the conclusion that the prosecution has established the guilt and convicted the accused as stated above.

5. Mr.Niranjan Mundergi, learned Advocate who

appeared for the Appellant no.1 submitted that relations between Babasaheb and the accused were strained. Learned Counsel further tried to submit that PW 8 belongs to group of Babasaheb and, therefore he is interested witness and has falsely supported the case and therefore PW 8 shall not be believed as ocular witness. It is further submitted that PW 9's statement was not immediately recorded and he is also in the party of Babasaheb and, therefore these witnesses are interested witnesses. Learned Counsel further submitted that FIR even though recorded on 27-5-1998 at about 23-30 hours, still report to the Magistrate was not given upto 4-6-1998. Thus, there is a delay which shows that there must be some concoction in the investigation.

6. Mr.Joshi who appeared for the Appellant no.2 has adopted the same argument.

7. The learned APP appearing for the State submitted that there is no merit in the submission made by the Counsel appearing for the Appellants. It is submitted that PWs 7, 8 and 9 are not chance witnesses, since they have come to the spot as the meals were arranged by one Mr.Shivaji Naik and they have seen the incident. Both of them have submitted the manner in which the assault has taken place and therefore their testimony is most natural and reliable and support the conviction. The learned APP for the State further submitted that even though there is an admission of

delay of submission of the report to the Magistrate of the registration of the offence, however, that has not caused prejudice to the defence of the accused. The fact of registration of crime on 27-8-1998 is not disputed by the defence and there are no other circumstances brought on record to justify as to how the delayed report to the magistrate would lead to the concoction of FIR.

8. The defence has not disputed that death of deceased was homicidal. Apart from that, it has come on record that dead body was examined by PW 12 Dr.Caimans Ouija Sanamadikar. The said witness proved the post mortem report **Exhibit 35** and from the Post mortem report it was revealed that there were as many as 23 incised wounds which were caused by the weapons like sword and axe. Articles "A" and "B" were shown to PW 12 and he has stated that injuries are possible by these weapons. PW 12 had further deposed that injuries were sufficient in ordinary course to cause the death of deceased. Cause of death reported by PW 12 is that deceased had died due to cardio respiratory failure due to head injury and other 23 injuries. Thus, the prosecution has proved that death of Babasaheb was homicidal one, apart from admission by defence before this Court.

9. From the testimony of PW 8 - Ganpati Shinu Pandhare it is revealed that on the day of incident PW 8 had been to the house of Shivaji Naik. The pan shop

of Mulla is at a distance of 150 to 200 ft from the house of Shivaji Naik. This witness was waiting outside the said house. When he heard the commotion from the side of Pan shop of Mulla he went to the said side. He has stated that he saw accused Dattu and Sukhdeo were beating Babasaheb. Accused Dattu was armed with sword and Sukhadeo was armed with axe and they were beating Babasaheb. Babaso was lying on the ground. Then both of them ran away from the spot. He had seen the injuries on the neck, head, mouth and hands of Babasaheb and injuries were bleeding. He thereafter states that son of deceased Babasaheb came to the spot and deceased was taken in a truck, and from Dafalapur he along with other carried Babasaheb to Jath in Government hospital, where Babasaheb was declared as dead. From the cross examination of this witness nothing has transpired which would show that this witness is not reliable. Only circumstance which has been brought on record is enimical relations between Babasaheb and accused as a result of village grampanchayat election and on the point of chairmanship of the educational institution. On the contrary, it has transpired in the cross examination itself that PW 8 had reached to the spot and he had seen the beating. There was commotion and that at about 50 to 60 persons gathered on the spot. Thus the presence of this witness apart from examination in chief has also been established by the statement from cross examination also.

10. The other witness is PW 9 - Sanjay Hariba Patil. This witness has also stated that he had been to the house of Shivaji Naik for taking meal. At that time he heard the commotion near pan shop of Baban Mulla and, therefore, he went to that spot and found that accused no.1 Dattu and accused no.2 Sukhdeo were beating Babasaheb. Accused Dattu was beating by means of sword and Accused Sukhdeo was beating by means of axe. Babasaheb was lying on the ground and thereafter they ran away. He had seen the injuries on neck, mouth, hands, head of Babasaheb. He has stated that thereafter he left the spot and went to house of Babasaheb to give information. From the cross examination of this witness nothing incredible has transpired. Both these witnesses PWs 8 and 9 are trustworthy. They are consistent and there are no contradictions and omission in their evidence and their testimonies are supported by medical evidence i.e. PW no.12 - Dr.Kailash Umaji Sanamadikar and

Exhibit 35 Post mortem report.

11. In these circumstances, we find that the submissions made by the learned Counsel Mr.Mundgari for the appellant no.1 that these witnesses were interested persons and because of enimical relations between the deceased with accused persons the accused are impleaded falsely in this offence is without any merit. Therefore we reject the submission made by Mr.Mundgari.

12. One more aspect to be highlighted is that accused no.2 had made a statement before PW 2 Appasaheb Bhimu Kamble, **Exhibit 17**, wherein accused no.2 had stated that axe and sword used by accused in the said crime were concealed in sugar-cane crop field which belongs to one Vasant Tukaram Pandhare. In view of this statement along with panchas the Police had gone to the said spot and from the said sugar cane field accused no.2 had shown the concealed articles viz. Axe (Article A) and Sword (Article B) vide panchanama Ex.18. At the time of discovery of axe and sword, the clothes of accused were found in the said sugar-cane field, vide panchanama Ex.18. These clothes of both the accused are marked as Articles "C", "D", "E" and "F". Clothes of accused and weapons recovered were sent to Chemical Analyser along with the material recovered from spot and clothes of deceased and it is revealed that blood group of deceased was "O" group and the same blood group was found on the articles A and B and clothes of accused as per Exhibit 13. It is pertinent to note that it is not contradictory case of the accused that they had sustained injuries at the relevant time. Therefore, the inference was drawn that blood on the clothes of the accused was of deceased and thus the chain is completely established by the prosecution. This evidence is unimpeachable. Therefore, we accept the finding recorded by the

Sessions Judge who convicted the accused.

13. Even though it is pointed out that there is delay in communicating Exh.21 - First Information Report, but defence has not shown as to how said act of prosecution has caused a prejudice to the accused. The delayed communication of F.I.R. to Magistrate itself does not vitiate the trial so as to acquit the Accused.

14. The learned Counsel for appellant submitted that discovery under Section 27 of Evidence Act has taken place on 4-6-1998 as per panchanama. However, the articles discovered and recovered from spot and body of deceased were sent to Chemical Analyser on 12-7-1998 and thus according to learned Counsel there is inordinate delay in sending the articles to C.A. and that is fatal to prosecution case. We do not find any merit in the submission because there is no chance for manipulation by the prosecution. Delay in sending these articles to C.A. is not a factor adverse to accused so as to prejudice defence of accused. Therefore, submission of learned Counsel referred to above is rejected.

15. In view of the voluminous evidence which has been discussed and which is consistent and reliable, we do not find any merit in the submissions made by the

learned Counsel for Appellants with regard to the delay caused in communicating FIR.

16. In the result, we find that there is no merit in the appeal. The appeal is hereby dismissed.

(S.R.SATHE,J.) (S.B.MHASE,J.)